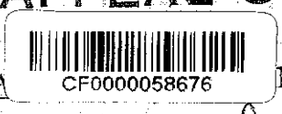
XII-189 (Jail) C. J. P. R./I-91 CRA 998/94 (2)

APPEAL OF PRISONER

Division Bench (Criminal)



No. 893/94 Name [illegible]

Father's name [illegible]

Residence [illegible] Age [illegible] ST NO. 408/93

Sentenced to [illegible] on 25/7/1994

Under Section 302 [illegible] by [illegible]

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 8/8/1994

2 Date on which copy received

3 Date on which Appeal sent 12/8/94

4 Whether the prisoner wishes to be represented or ~~not~~. Yes.

No. 893/94. Name [illegible]

Confined in [illegible] Jail [illegible]

No. 646 /Law/ Dated 1994. 12/8/94

Forwarded to the [illegible]

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent

[illegible]

Date of receipt in Office

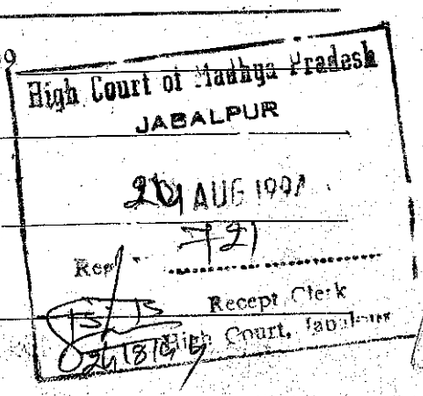
Date of receipt of record to accompany the

Memo of Appeal to the Appellate court

No. Dated 199

Forwarded to the

Date of receipt in Appellate court



[P. T. O.]

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.I.R. (14)

आदेश पत्रक

मामला क्रमांक Cr. App. No. 998/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 998 of 1994

Appellant : Panchram

Vs.

Respondent : State of Madhya Pradesh

Shri V.D. Bajpai, Sr. Advocate with Shri V.K. Sharma, counsel for the appellant.

Shri U.N.S. Deo, learned Additional Public Prosecutor with Shri Akhil Mishra and Shri M.P.S. Bhatia, learned Panel Lawyers for the respondent/State.

JUDGMENT
(20.02.2006)

L.C.Bhadoo, J Oral

The accused/appellant has preferred this appeal against the impugned judgment dated 25.07.1994 passed by learned Sessions Judge, Raipur in S.T. No.408/93 whereby learned Sessions Judge after holding the appellant guilty for commission of murder of Lakhanlal convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo life imprisonment.

2. The case of the prosecution, in brief, is that Gangaram gave merg intimation P-6 on 28.5.1993 at about 15.50 hours in the Police Station Chhura to the effect that on the date of incident at 11.00 a.m. Panchram of his village first abused Lakhanlal in front of Samaj Bhawan near the shop and started

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quarreling. He took out knife from his Attire, attacked on the chest of Lakhanlal and murdered him. Crime in question was witnessed by Khemnarayan, Bundelsingh and himself. Body of Lakhanlal was lying on a bench near the shop. Deceased was wearing full pant and shirt. Blood started oozing out of the injury. Receiving this report Station House Officer registered FIR P-5 for commission of the offence under Section 302 of the IPC and left for the scene of occurrence. After giving notice to the Panchas he prepared the Panchnama P-1 of the body of Lakhanlal. While in the police custody, the accused gave memorandum P-2 under Section 27 of the Evidence Act and in pursuance of that two knives, one shirt and one Lungi were taken into possession under P-2A at the instance of the accused. The Investigating Officer also took into possession the blood stained soil and plain soil from the place of occurrence as also the slippers & clothes of the deceased under P-3 and P-4. Body of Lakhanlal was sent for post mortem examination to Primary Health Centre Chhura under P-7 where Dr. K.V. Rao (PW-8) conducted post mortem examination on the body of Lakhanlal and prepared post mortem report P7-A. Site plan P-9 of the place of occurrence was prepared. Recovered articles were sent for chemical examination to Forensic Science Laboratory, Raipur under P-11 from where report P-12 was received. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Gariyabandh who in turn committed the case to the Sessions Judge, Raipur, for trial.

3. Prosecution in order to establish the charge against the accused examined 10 witnesses. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the prosecution evidence. However, in reply to Question No.10 the accused admitted that

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witnesses Gangaram, Khemnarayan, Bundelsingh and Yogram were sitting on the bench of the shop. He has also admitted in reply to Question No.16 that Lakhan died and he has also submitted that Panchnama of the dead body of Lakhan was prepared and all the witnesses are of the same group and there was a dispute between Lakhan and Jagdish. He has further stated that he asked Lakhan and Jagdish not to quarrel and Jagdish assaulted Lakhan with the knife. He is innocent. In his defence, he examined DW-1 Lokram Yadav, DW-2 Indira Bai, DW-3 Kumari Bai, DW-4 Om Prakash Yadav and DW-5 Ibrahim. After hearing arguments of the Additional Public Prosecutor and counsel for the accused learned Sessions Judge has convicted and sentenced the accused as mentioned in Paragraph-1 of this judgment.

4. We have heard Shri Bajpai, Senior Advocate with Shri Sharma counsel for the accused/appellant and Shri Deo, Additional Public Prosecutor with Shri Mishra and Shri Bhatia, Panel Lawyers for the State.

5. Homicidal nature of death of Lakhanlal is not in dispute.

6. As far as involvement of accused/appellant in the crime in question is concerned, Mr. Bajpai argued that in this case no opportunity was granted by learned Sessions Judge, to counsel for the accused to cross examine witness PW-1 Jagdish Ram Yadav, therefore, serious prejudice has been caused to the accused. He also argued that the manner in which the prosecution witnesses have stated that the offence was committed is not probable and it was not possible for the accused to take out two knives at a time from the Attire and then attack the deceased. He has further submitted that as per FSL report no blood was found on the knife, which is said to have been recovered at the

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instance of the accused, therefore, the accused cannot be connected with the crime in question based on the recovery and as such, the eye-witnesses cannot be believed. Lastly, Mr. Bajpai argued that the recovery, which is said to have been made at the instance of the accused, is not in conformity with Section 27 of the Evidence Act.

7. On the other hand learned counsel for the State supported the impugned judgment of the trial Court.

8. As per prosecution case, crime in question was witnessed by PW-3 Gangaram, PW-4 Khemnarayan, PW-5 Bundelsingh and PW-10 Yognath. Gangaram PW-3, who lodged the report P-5, has stated that a day before the incident at about 7 p.m. Lakhan and Manikpuri met him and asked him to let us consume liquor on which he denied. Thereafter, on being persuaded he accompanied them and they were going to the house of Manikpuri, on the way accused Panchlal met them in the house of Anant Patel, he was sitting with Anant Patel. Lakhan asked the accused what you have stated to Jagdish, let us go and inquire from him, whereupon accused accompanied them and when they turned towards a grocery shop, Panchram ran away towards his house. On the next day at about 11 a.m. when he went near the grocery shop, the accused was sitting on the bench, deceased Lakhanlal and Bundelsingh also came there and purchased grocery items from the shop. The accused left towards his house, he returned and started abusing Lakhanlal, on which Lakhanlal also started abusing whereupon accused took out a knife from his Attire and stabbed on the chest of Lakhanlal on which Lakhanlal said that Panchram has stabbed him with the knife and blood started oozing out of the injuries. Khemnarayan was also present there. Thereafter, they called the villagers, however, by that

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time Lakhanlal was already dead. He lodged the report P-5 in the police station. PW-4 Khemnarayan, PW-5 Bundel Singh and PW-10 Yogram have corroborated the above evidence. All these witnesses are villagers. After receiving the report the Investigating officer on the basis of memorandum P-2 given by the accused regarding the place where he had kept knife and clothes, recovered the knife under P-2A.

9. As far as arguments advanced by the counsel for the accused/appellant that the defence counsel was not allowed to cross-examine PW-1 Jagdish Ram Yadav is concerned, the evidence of Jagdish Ram was recorded on 29.4.1994 and on that date not only Jagdish Ram but evidence of PW-2 Chhabiram, PW-3 Gangaram, PW-4 Khemnarayan and PW-5 Bundelsingh was also recorded and all the eyewitnesses have been cross examined by the defence counsel and Jagdish Ram is the witness of Ex. P-1 Panchnama of the body and Ex P-2 memorandum and recovery of the knife in pursuance of that memorandum under P-2A. Perusal of the order sheet of the trial Court dated 29.4.1994 reveals that earlier the counsel for the accused Hasim Khan Advocate was absent on 28.4.1994, however, the witnesses were present and adjournment was sought for one day, therefore, the matter was adjourned for 29.4.1994. Even on that date said advocate did not turn up, therefore, the Court appointed Shri R.D.S. Kashyap on behalf of the accused who sought time to go through the record and cross examine the witnesses and therefore some time was granted. Thereafter, the evidence of PW-1 to PW-5 was recorded.

10. There is nothing on record which shows that the counsel for the accused was not allowed to cross-examine PW-1 Jagdish Ram Yadav rather after paragraph 3 of examination-in-chief paragraph 4 starts regarding cross-

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examination by Shri R.D.S. Kashyap. Even in the last when the cross examination was finished by the counsel for the accused, the Court has also questioned this witness, therefore, this witness has been elaborately cross examined by the defence counsel as well as by the Court and as such it cannot be said that opportunity was not given to the defence counsel to cross examine this witness. Moreover, learned counsel for the accused/appellant has not been able to point out as to how the accused has been prejudiced, therefore, we do not find any substance in the arguments advance by the learned counsel for the accused/appellant.

11. As far as argument of Mr. Bajpai regarding the evidence of PW-3 Gangaram that he has stated in the cross-examination that the accused took out two knives in both the hands, therefore, in view of the above evidence it was not possible for the accused to inflict injuries on the chest with one knife, is concerned, this witness in paragraph 9 of the cross examination has clearly stated that the accused took out two knives in both the hands but according to the learned counsel for the accused, this witness has not stated that when the knives were in both the hands how the accused was able to inflict the injuries. But, we fail to understand that even if any person had knife in each hand then how it can be said that he was not able to inflict injury with one knife. It is not the case where the hands of the accused were in any way restricted in its movement; therefore, he was not able to inflict the injury. Moreover, the knife is such a weapon, any person can easily handle knife in both the hands in any manner he wants.

12. As far as other argument advanced by the learned counsel for the accused/appellant that no blood was found on the knife, therefore, in the first

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instance the accused cannot be connected with the crime in question on the basis of recovery of knife and also on that count the witnesses cannot be believed, is concerned, it is true that as per the FSL report no blood was found on the knife but merely on this ground the ocular evidence of the witnesses cannot be disbelieved particularly when the accused himself has admitted in his statement under section 313 of the Code of Criminal Procedure, the presence of eyewitnesses on the scene of occurrence and as has been mentioned earlier eyewitnesses PW-3 Gangaram, PW-4 Khemnarayan, PW-5 Bundelsingha nd PW-10 Yogram have in clear terms stated that the accused came from his house, abused deceased Lakhanlal and thereafter some altercation took place between them and the accused inflicted injury on the chest of Lakhanlal with the knife, the evidence of these witnesses cannot be disbelieved. Moreover, in the cross examination of these witnesses defence has not been able to elicit any circumstance to make the evidence of these witnesses untrustworthy or unreliable.

13. If the weapon of offence is found stained with human blood that is an additional circumstance to corroborate the evidence of eye-witnesses and if as per FSL report no blood is found on the knife, then the whole prosecution case cannot be thrown away where the ocular evidence is clinching, convincing and indicating the involvement of the accused in crime in question. Moreover the doctor, who conducted the postmortem examination on the body of deceased and also examined the knife in question, gave his opinion Ex.P-10A and also stated before the Court that there were stained like blood on the knife and in his opinion the injury, which was found on the body of deceased, could be caused by the knife in question. As per Dr. K.V. Rao (PW-8) there was a stab injury in the size of 2½ cm. x 1cm x 6 cm on the left side of chest in between 5th to 6th rib

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and on dissection he found that left lung & heart were punctured, which was deep into 2½ cm, as a result of which thorax cavity was found with full of blood and in his opinion such an injury can be caused by a knife or some other sharp edged weapon. Thus, it is clear that the injury has been caused by the sharp edged weapon and doctor has not been cross-examined to challenge his above evidence, therefore, the arguments advanced by learned counsel for the accused/appellant cannot be accepted and for this view, we are fortified by the decision of the Hon'ble Apex Court in the matter of **State of Rajasthan Vs. Dhool Singh** reported in **2004 AIR SCW 24**.

14. As far as the argument of Mr. Bajpai that the recovery has not been effected in accordance with Section 27 of the Evidence Act is concerned, Section 27 of the Evidence Act envisages that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. It is settled principle of law that the recovery pursuant to the disclosure statement made by the accused under Section 27 of the Evidence Act is admissible in evidence. In the matter of **Dhananjoy Chatterjee Vs. State of West Bengal** reported in **1994 (2) SCC 220** the Hon'ble Apex Court has held that '*entire statement made by an accused person before the police is inadmissible in evidence being hit by Sections 25 and 26 but that part of his statement which led to the discovery of the articles is clearly admissible under Section 27 of the Act. It is also held that the Court must disregard the inadmissible part of the statement and take note only of that part of his statement which distinctly relates to the discovery of the articles pursuant to the disclosure statement made by the accused. It is further*

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held that the discovery of the fact in this connection includes the discovery of an object found, the place from which it is produced and the knowledge of the accused as to its existence'. In the case of **Gola Konda Venkateswara Rao Vs. State of A.P.** reported in **2003(9) SCC 277** the Hon'ble Apex Court has reiterated the view and held that '*discovery statement of an accused leading to recovery of crime articles from concealed place. Even though the discovery statement and the recovery memo did not bear the accused's signature. The fact of recovery from the well and dug out from a place which was pointed out by the appellant and, therefore, such discovery was voluntary. That, the recovery was in consequence to the information given fortified and confirmed by the discovery of the wearing apparel and skeletal remains of the deceased and, therefore, the information and statement cannot be held false. In the present case on the recovery memo the signatures of all the accused have been obtained.*' In the case of **Praveen Kumar Vs State of Karnataka** reported in **2003 (12) SCC 199** the same view has been reiterated.

15. In the light of above principle, we have examined the evidence available on record. PW.-7 Sunil Nema Sub Inspector has stated that while in the police custody accused gave information that he has kept his lungi, shirt and knife in the house and he can get the same recovered from his residence and the A to A, B to B and C to C portions were reduced into writing, which bears his signature and the witnesses' signatures. He has further stated that the accused took him and the witnesses to his house and brought the knife and clothes from perchi (verandah) of his house and the same were taken into possession under P-2A. In the cross examination this witness has stated that the accused took them to the house and thereafter to the room. He has further stated that it is incorrect to say that he did not enter the house of the accused and accused

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himself entered the house and brought the knife and the clothes. P.W.-1 Jagdish Ram Yadav has stated that investigation was made from the accused in his presence in which he stated that he has kept the knife in his residence and can get the same recovered and he has also stated that the clothes are also kept in his house and he took him to his residence and got the clothes and knife recovered. The statement of the accused is P-2 and he took them to his residence and took out two knives, shirt and pant and the same were received under P-2A which bears his signatures.

16. We do not find any discrepancy in the evidence of Investigating Officer and P.W.-1 Jagdish Ram. The accused gave memorandum P-2 regarding the place where he had kept the knife and clothes and in pursuance of which he got the same recovered. Therefore, the above recovery is in consonance with Section 27 of the Evidence Act and the same is admissible.

17. In view of the evidence of eyewitnesses namely PW 3 Gangaram, PW-4 Khemnarayan, PW-5 Bundelsingh and PW-10 Yogram it is established that the accused stabbed deceased Lakhanlal on his chest with knife and the evidence of these witnesses further stands corroborated by the medical evidence of P.W. 8 Dr.K.V. Rao. Even PW -6 Naresh Yadav has stated that on the fateful day just half an hour before the incident the accused Panchram met him in the village and he enquired from him as to where he was going, at that time he was in angry mood and replied that there was some dispute with Lakhanlal that's why he is in angry mood. He was saying that he will kill Lakhanlal because he is quarrelling with him time and again, on which he advised Panchram and said that get the matter settled through Panchayat and when his father came to his residence he also advised Panchram. However, Panchram left but after half an hour he heard the noise near the shop of Yogram and by the time he reached

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the spot, the dispute was already over and Lakhanlal was lying in an injured condition. Therefore, from the evidence of this witness Naresh Yadav also the conduct of the accused just half an hour before the crime in question shows that he stated that he will kill Lakhanlal and the evidence of this witness regarding conduct of the accused/appellant is admissible under Section 8 of the Evidence Act. Therefore, on the above discussions, involvement of the accused/appellant in the crime in question is established and we do not find any illegality or infirmity in the impugned judgment of the trial Court to that extent.

18. Mr. Bajpai has further argued that there was a single injury on the body of the deceased and the quarrel took place on the spur of moment, therefore, the offence does not travel beyond Section 304-II of the IPC. He places his reliance on the judgments of the Apex Court in the matters of **Mahesh Vs. State of M.P.** reported in, **AIR 1996 SC 3513**, **Shubhkaran Vs. State of M.P** reported in **2004 (1) M.P.L.J. 215**, **Krishna Tiwary and another Vs. State of Bihar** reported in **AIR 2001 SC 2410** and **Satnam Singh and another Vs. State of M.P.** reported in **2003(1) M.P.L.J. 494.**

19. In order to bring the offence under Section 304-II of the IPC we have to see whether the facts of the present case shows that the offence committed by the accused is covered under Exception 4 to Section 300 of the IPC. Exception 4 envisages that culpable homicide is not murder if it is committed without premeditation, in a sudden fight, in the heat of passion upon sudden quarrel and without offender's having taken any undue advantage or acted in a cruel or unusual manner.

20. In the matter of Mahesh (supra) the dispute was that the cattle entered the field of Puroshattam PW-1, where crop of *soyabeen* was standing, the deceased and PW-2 told him to take his cattel away and not let his cattle

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damage the crop. The appellant, however, did not pay heed to their requests and insisted that he would graze the cattle in that field only. Thereafter, an altercation ensued between the deceased and the accused and the accused dealt a Farsa blow on the head of the deceased and on such blow the deceased fell on the ground and died instantaneously. The court held that the assault on the deceased was made during sudden quarrel without any premeditation. In this situation, the matter is covered under Exception 4 to Section 300 of the IPC.

21. Similarly, in the matter of Krishna Tiwary (supra) a sudden quarrel took place between the two brothers without premeditation, even the relations of the brothers were cordial prior to the incident and when the accused hold the collar of the shirt of his brother – deceased and his son the accused gave only blow, the Court held that the accused had not acted in any cruel or unusual manner and did not take undue advantage. Similarly in the matter of Shubhkaran Vs. State of M.P (supra) it has been held that the accused has inflicted only solitary blow from the blunt side of the axe and has not even attempted to repeat blow and there was no premeditation in causing the injury to the deceased on the part of the accused, therefore the accused was liable to be convicted under Section 304 Part II of the IPC.

22. Similarly, in the matter of Satnam Singh (supra) it has been held that it was not established that the fatal injury to the deceased was caused with an intention to cause his death on the part of the main accused and in case if it is found that the injury was inflicted in the heat of passion then the offence was in the category punishable under Section 304 Part II of the IPC.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23. Based on the above law, we have to examine the facts of the present case as to whether the act of the accused is covered under Exception 4 to Section 300 of the IPC. As far as single blow is concerned, the Apex Court in the matter of State of Rajasthan Vs. Dhool Singh (supra) has observed that the single blow is not always determinative of intention and it is the nature of the injury, the part of the body where it is caused, the weapon of offence used in causing such injury, which are the factors necessary for deciding the fact whether the accused caused death of the deceased intentionally.

24. In the instant case if we peruse the evidence of the eyewitnesses, P.W. 3 Gangaram has clearly stated that on the previous day when he along with Lakhanlal and Manikpuri were going to the house of Manikpuri near the house of Anant Patel, the accused Panchram and Anant Patel met them on which Lakhanlal enquired from Panchram what he has stated to Jagdish Ram, let us go and enquire, on which Panchram accompanied them, however, on the way he ran to his house and next day morning at about 11.00 a.m. Panchram was sitting on the bench near the grocery shop and thereafter, the accused went to his house, returned back and started abusing Lakhanlal. Lakhanlal also abused and accused took out knife from his Attire and stabbed on the chest of Lakhanlal. PW.6 Naresh Yadav has stated that just half an hour before the incident he met the accused and he was in a angry mood and on enquiry he replied that Lakhan is quarrelling with him and that is why he is angry and he was saying that he will kill Lakhanlal on which he advised him to convene Panchayat and even his father advised him. But just half an hour later he heard the noise when he went towards that side and saw that Lakhanlal was lying in an injured condition. Therefore, this background taken together the fact that the accused went to his house, came with the knife and stabbed on the chest – the

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vital organ of the body, of the deceased Lakhanlal and stabbed the knife between 5th and 6th rib as a result of which lungs and heart were also punctured, therefore, the intention of the accused was writ large to cause death of Lakhanlal and he assaulted with the knife with preparation and stabbed on such a part of the body which resulted in death of Lakhanlal spontaneously. Therefore ,the quarrel was neither sudden nor in the spur of moment rather the accused with premeditation assaulted the deceased with knife, therefore, the case of the accused is not covered under Exception 4 to Section 300 of the IPC.

25. For the foregoing reasons, we do not find any illegality or infirmity in the impugned judgment of the trial Court and we find that the appeal in question is without merit, the same is liable to be dismissed and it is accordingly, dismissed.

26. C.C. as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/
Khan

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YOGENDRA SINGH KANWAR
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